

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA
(DIVISION 2)

Buksh v Minister for Immigration, Citizenship and Multicultural Affairs

[2023] FedCFamC2G 817

File number:	PEG 134 of 2022
Judgment of:	JUDGE KENDALL
Date of judgment:	14 September 2023
Catchwords:	MIGRATION – Student visa – decision of the Administrative Appeals Tribunal – whether the Tribunal misconstrued the requirements of Public Interest Criterion 4020 when determining that there was a reasonable suspicion that the applicant had provided or had caused to be provided a bogus document – no jurisdictional error – application dismissed.
Legislation:	<i>Migration Act 1958</i> (Cth), ss 5, 359A, 375A & 476 <i>Migration Regulations 1994</i> (Cth), cl 500.2, 500.211, 500.217 & 500.218 in Schedule 2 and Public Interest Criterion 4020 in Schedule 4
Cases cited:	<i>Minister for Immigration & Ethnic Affairs v Wu Shan Liang</i> (1996) 185 CLR 259 <i>Singh v Minister for Immigration and Border Protection</i> [2018] FCAFC 52 <i>Singh v Minister for Immigration, Multicultural Affairs and Citizenship</i> [2013] FCCA 1435 <i>Trivedi v Minister for Immigration and Border Protection</i> [2014] FCAFC 42
Division:	Division 2 General Federal Law
Number of paragraphs:	84
Date of hearing:	5 May 2023
Place:	Perth
Counsel for the Applicant:	Ms S Frankel
Solicitor for the Applicant:	Estrin Saul Lawyers

Counsel for the First
Respondent:

Ms C Taggart

Second Respondent:

Submitting appearance, save as to costs

Solicitor for the
Respondents:

Australian Government Solicitor

ORDERS

PEG 134 of 2022

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA (DIVISION 2)

BETWEEN: FARID BUKSH
Applicant

AND: MINISTER FOR IMMIGRATION, CITIZENSHIP AND
MULTICULTURAL AFFAIRS
First Respondent

ADMINISTRATIVE APPEALS TRIBUNAL
Second Respondent

ORDER MADE BY: JUDGE KENDALL

DATE OF ORDER: 14 SEPTEMBER 2023

THE COURT ORDERS THAT:

1. The application (as amended on 5 April 2023), be dismissed.

Note: The form of the order is subject to the entry in the Court's records.

Note: The Court may vary or set aside a judgment or order to remedy minor typographical or grammatical errors (r 17.05(2)(g) *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (Cth)), or to record a variation to the order pursuant to r 17.05 *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (Cth).

REASONS FOR JUDGMENT

JUDGE KENDALL:

BACKGROUND

- 1 The applicant in this proceeding is a citizen of Pakistan (Court Book (“CB”) 14-16 & 33). He was granted an initial student visa in September 2019 and arrived in Australia in October 2019 as the holder of that visa (CB 779).
- 2 On 14 January 2021, the applicant applied for a Student (Temporary) (Class TU) (Subclass 500) visa (the “visa”), being the visa the subject of this proceeding (CB 13-32). With that visa application, the applicant provided several supporting documents, including identity documents, overseas health cover information, academic records, business records, a genuine temporary entrant statement and a document described as an Account Maintenance Certificate (the “AMC”) (purportedly issued by Invest Capital Investment Bank Limited (“ICIBL”) and dated 30 December 2020) (CB 33-117). In his visa application, the applicant nominated a migration agent as his authorised recipient (the “representative”) (CB 17-18).
- 3 On 25 June 2021, the Department of Home Affairs (the “Department”) invited the applicant (through his representative) to comment on information in relation to his visa application (CB 122-126). Relevantly, that correspondence provided (CB 122-123):

According to the below information, I have serious concerns you have provided a bogus document to the Department of Home Affairs (the Department) in support of your application. Consequently, you may not meet Public Interest Criterion 4020.

In support of your Student visa application, you provided an Account Maintenance Certificate from Invest Capital Investment Bank Limited (ICIBL), located at 2-H, Gulberg-II, Lahore, Telephone Number: (92 42) 35777285-86, issued on 30 December 2020, in the name of Khalil AHMAD.

In February 2021, a Departmental Officer, conducted checks to confirm the information contained within the abovementioned Account Maintenance Certificate and confirmed the following:

- There are no bank offices located at the address mentioned on the Account Maintenance Certificate.
- The telephone number, as declared on the Account Maintenance Certificate, is registered with the Pakistan Telecommunication Company but is not listed to ICIBL, but rather to another business.
- ICIBL does not operate as a genuine bank for financial purposes.

Therefore, there are concerns that you may not meet PIC 4020(1) as there is evidence suggesting you have provided a bogus document in relation to this visa application.

- 4 On 22 July 2021, the applicant’s representative responded to the Department’s invitation to comment. He did so via email and provided written submissions addressing the concerns raised by the Department. Various supporting documents were also provided to the Department (CB 127-284).
- 5 On 6 August 2021, a delegate of the first respondent (the “Minister”) refused to grant the applicant the visa (CB 290-294). The delegate determined that the applicant did not satisfy Public Interest Criterion 4020 (“PIC 4020”) in Schedule 4 of the *Migration Regulations 1994* (Cth) (the “Regulations”) and, as such, failed to satisfy cl 500.217 in Schedule 2 of the Regulations (CB 293).
- 6 On 18 August 2021, the applicant lodged an application for review of the delegate’s decision with the Administrative Appeals Tribunal (the “Tribunal”) (CB 295-306). The applicant confirmed that he was still being assisted by his representative in relation to the review application (CB 299).
- 7 On 28 October 2021, the Tribunal invited the applicant (through his representative) to attend a hearing before the Tribunal on 24 November 2021 (CB 312-316).
- 8 On 19 November 2021, the applicant’s representative provided written submissions and supporting documents to the Tribunal (CB 327-653).
- 9 On 23 November 2021, the Tribunal asked the Department to provide information to it in relation to the investigation which resulted in the determination that the AMC issued by ICIBL was “a bogus document” (CB 654-655).
- 10 On 24 November 2021, the applicant appeared before the Tribunal (CB 656-659). He was assisted at that hearing by his representative (CB 656).
- 11 On 3 December 2021, the applicant’s representative provided an additional submission in support of the applicant’s review application (CB 660-669).
- 12 On 16 December 2021, the Tribunal invited the applicant (through his representative) to make submissions in relation to the validity of a certificate issued by the Department pursuant to s 375A of the *Migration Act 1958* (Cth) (the “Act”) (CB 670-673). The Tribunal also invited the applicant (through his representative) to comment on information received from the Department about its investigation into ICIBL (CB 674-678).

13 In its letter to the applicant, the Tribunal summarised the information received from the Department, as follows (CB 676-677):

- a) ICIBL has been identified as a ‘ghost’ bank which does not actually exist as a physical bank or operate as a genuine bank.
- b) Investigations revealed there was no evidence of physical bank offices at the claimed address for the head office in Lahore or the branches of the bank in Islamabad, and that phone numbers claimed to be for the bank were either linked to other businesses or not operational.
- c) It has been established that whilst bank accounts referred to in ICIBL documentation do exist virtually, the funds do not belong to the Student visa applicants or their financial sponsors. Funds have been loaned by a third party recommended by the bank’s head office verification officer for a fee.
- d) The Account Maintenance Certificate provided in association with your visa application contains features that were identified in the investigation as common in documentation issued by ICIBL. In particular, the bank statement you provided lists a single large credit to the account, and no other transactions.

This information is relevant because you have provided an ‘Account Maintenance Certificate’ and a statement from Invest Capital Investment Bank Ltd as evidence that you have access to sufficient funds to support yourself during your stay in Australia. If the Tribunal relies on the information above, it would find that you have provided a bogus document because the Tribunal would reasonably suspect the ICIBL documents you have provided purport to have been, but were not, issued in respect of the person named as the account holder, or are counterfeit, and therefore you do not meet public interest criterion 4020(1). Subject to the Tribunal considering whether there are circumstances which justify the grant of the visa, the Tribunal would affirm the decision under review.

14 On 12 February 2022 and 14 February 2022, the applicant’s representative provided the Tribunal with further submissions and supporting documents responding to the Tribunal’s invitations (CB 698-774).

15 On 16 June 2022, the Tribunal affirmed the Delegate’s decision refusing to grant the applicant the visa (CB 778-801).

16 On 11 July 2022, the applicant filed an application for judicial review of the Tribunal’s decision in this Court (CB 1-7). That application was supported by an affidavit (affirmed by the applicant on 11 July 2022) which annexed a copy of the Tribunal’s decision in this matter (CB 8-12).

17 On 4 April 2023 (at 5.11pm) an amended application was filed on behalf of the applicant.

18 The amended application for judicial review was filed pursuant to s 476 of the Act. To obtain assistance from this Court, the applicant must show that the Tribunal has fallen into jurisdictional error.

19 The amended application contains one particularised ground of review as follows:

1. In finding that the Applicant had provided a ‘bogus document’ in relation to his visa application, Second Respondent misconstrued the requirements of Public Interest Criterion 4020 (PIC 4020).

Particulars

- a. In order to be considered a ‘bogus document’, a document must be suspected to fall into one of the categories set out in section 5 of the Migration Act 1958 (Cth).
- b. On the evidence before the Second Respondent, the bank statement provided by the Applicant in relation to his visa application could not have fallen into any of the categories in the definition of ‘bogus document’.
- c. The Second Respondent’s finding that the relevant bank statement was a ‘bogus document’ was based on the same kind of ‘critical misunderstanding’ of the definition of bogus document identified in *Singh v MIMAC* [2013] FCCA 1435 at [29].

20 The matter proceeded to a hearing on 5 May 2023. The applicant was represented by Ms Sarah Frankel (“Ms Frankel”) from Estrin Saul Lawyers at that hearing. The Minister was represented by Ms Cobey Taggart (“Ms Taggart”) of counsel. The Court thanks Ms Taggart and Ms Frankel for their considerable assistance with what proved to be a complex matter.

21 The materials before the Court include the application and supporting affidavit filed by the applicant on 11 July 2022, the Court Book numbering 801 pages (marked as Exhibit 1), the amended application for judicial review filed on behalf of the applicant on 5 April 2023, written submissions filed on behalf of the applicant on 11 April 2023 and written submissions filed on behalf of the Minister on 21 April 2023.

RELEVANT LEGISLATIVE PROVISIONS AND THE TRIBUNAL'S DECISION

22 As will be detailed below, the central issue before the Court is whether the Tribunal correctly understood the definition of “bogus document” in section 5(1) of the Act when assessing whether the applicant satisfied the requirements of PIC 4020.

Relevant legislative provisions

23 As outlined above, the applicant in this matter applied for a Subclass 500 visa. The eligibility criteria for the grant of that visa are set out in cl 500.2 in Schedule 2 of the Regulations, which relevantly provides:

500.2 Primary criteria

Note: The primary criteria must be satisfied by at least one member of the family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

All criteria must be satisfied at the time a decision is made on the application.

24 The criteria that the applicant was required to satisfy for the grant of the visa in this case are set out in cll 500.211 to 500.218 in Schedule 2 of the Regulations.

25 Of particular relevance in this matter is cl 500.217 in Schedule 2 of the Regulations, which relevantly provides:

500.217

- (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4010, 4013, 4014, 4020 and 4021.

...

26 The applicant in this matter was found to not satisfy PIC 4020 in Schedule 4 of the Regulations, which states:

4020

- (1) There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal during the review of a Part 5-reviewable decision, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:
 - (a) the application for the visa; or
 - (b) a visa that the applicant held in the period of 12 months before the application was made.

...

- (4) The Minister may waive the requirements of any or all of paragraphs (1)(a) or (b) and subclause (2) if satisfied that:

- (a) compelling circumstances that affect the interests of Australia; or
- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;

justify the granting of the visa.

- (5) In this clause:

information that is false or misleading in a material particular means information that is:

- (a) false or misleading at the time it is given; and
- (b) relevant to any of the criteria the Minister may consider when making a decision on an application, whether or not the decision is made because of that information.

Note: For the definition of ***bogus document***, see subsection 5(1) of the Act.

27 'Bogus document' is defined in s 5(1) of the Act, as follows:

5 Interpretation

- (1) In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

The Tribunal's decision

- 28 The Tribunal's decision in this matter is 24 pages in length and spans 96 paragraphs. The final five pages contain extracts of relevant legislative provisions, a list of documents provided by the applicant prior to the Tribunal hearing and a copy of the applicant's submissions provided in response to the invitation to comment letter sent by the Tribunal (pursuant to s 359A of the Act).
- 29 The Court notes the Minister's forensic summary of the Tribunal's decision and ultimate findings in written submissions filed by the Minister on 21 April 2023 at [7]-[19]. Having reviewed the Tribunal's decision in detail, the Court is satisfied that the summary provided by the Minister is accurate. In the circumstances, the Court adopts the Minister's summary as its own. With some additions and minor amendments, the Tribunal's decision can be summarised as follows.
- 30 The Tribunal noted that, in support of his visa application, the applicant provided a document that was said to be an AMC from ICIBL issued on 30 December 2020 (in the name of the applicant's father) and showing account transaction details for the period from 21–30 December 2020 (at [8]).
- 31 The Tribunal explained that the Minister's delegate had found that they held a reasonable suspicion the ICIBL AMC was a bogus document. The delegate's reasons explained that a Departmental Officer had conducted investigations to confirm the information contained in the AMC and that Officer had determined that (at [9]):
- (a) there were no bank offices located at the address identified on the AMC;
 - (b) the telephone number declared on the AMC was registered to another business and not to ICIBL; and
 - (c) ICIBL does not operate as a genuine bank for financial purposes
- 32 The Tribunal noted that the applicant had been invited to, and had provided, comment about that matter before the delegate made their decision. The delegate considered those comments but, relying upon the Departmental investigation, was satisfied the ICIBL AMC was "bogus" (at [10]-[13]).
- 33 The Tribunal explained further that the applicant sought review of the delegate's decision by the Tribunal and appeared before the Tribunal (via video link) to give evidence and present arguments. The applicant was represented in relation to the Tribunal review (at [1] & [3]-[4]).

- 34 The Tribunal noted that, on 16 December 2021, the Minister provided documents containing information reports relating to the detection of, and investigation into, entities engaged in suspected widespread finance fraud in Pakistan and issued a certificate pursuant to s 375A of the Act in relation to those documents (at [23]). The information given to the Tribunal provided “significantly more detail into the results of the investigation into ICIBL than is outlined in the delegate’s decision record and the Departmental file” (at [42]).
- 35 As further noted by the Tribunal, the effect of the Minister’s certificate under s 375A of the Act was that the Tribunal was precluded from disclosing the information covered by the certificate to the applicant. The applicant was invited to, but did not, provide any comment he may wish to make as to the validity of that s 375A certificate (at [24] & [29]).
- 36 The Tribunal determined that that it was appropriate to put the gist of the information in the documents referred to in that certificate (which was adverse to the applicant) to the applicant and to invite comment from him pursuant to s 359A of the Act (at [24]-[25] & [46]). That invitation set out the matters that had been identified by the delegate’s reasons and also stated that:
- (d) ICIBL had been identified as a “ghost” bank that does not actually exist as a physical bank or operate as a genuine bank;
 - (e) whilst bank accounts referred to in ICIBL documentation do virtually exist, the funds do not belong to the student visa applicants or their financial sponsors and funds have been loaned by a third party recommended by the bank’s head office verification officer for a fee; and
 - (f) the AMC provided by the applicant contained features that were identified in the investigation as common in ICIBL documentation. In particular, the identification of a single large credit with no other transactions (at [25]).
- 37 As explained by the Tribunal, the applicant responded to that invitation and provided various documents and contentions in support of his assertion that the AMC was not a bogus document (at [28]).

38 Having received that information, the Tribunal proceeded to consider whether the AMC was a bogus document. In doing so, the Tribunal set out the requirements of PIC 4020 and identification of bogus documents (at [32]-[39]). In particular, the Tribunal noted that:

36. While PIC 4020 refers to information that is false, in the sense of purposely untrue, it is not necessary for the Minister (or the Tribunal on review) to conclude that the applicant was aware the information was purposely untrue in order for PIC 4020 to be engaged. However, an element of fraud or deception by some person is necessary to attract the operation of the provision: *Trivedi v MIBP* [2014] FCAFC 42.

39 The Tribunal then undertook an analysis of the evidence before it to determine whether it was satisfied that the AMC was a “bogus document”. Relevantly, the Tribunal identified and considered information as to:

- (g) the claimed physical location of ICIBL, including locations identified on the AMC (at [51]-[58]);
- (h) the identification of phone numbers on the AMC and whether they were phone numbers of or for ICIBL (at [59]-[66]);
- (i) whether ICIBL was operating as a genuine bank for financial purposes (at [67]-[69]);
- (j) whether the AMC contained features in common with documents identified in the investigation referred to in the s 375A certificate (where a single large credit with no other transactions was identified) (at [70]-[74]); and
- (k) whether there was evidence that a person purporting to be associated with ICIBL was facilitating the production of bogus documents (at [78]-[83]).

40 Having considered the information before it, the Tribunal was satisfied that there were grounds to have a reasonable suspicion that the AMC was a bogus document because it satisfied the definition set out in paragraph (b) of the relevant definition in s 5(1) of the Act. In particular, the Tribunal determined that AMC could be described as a counterfeit document that was made to imitate and pass for something other than a genuine representation of funds held by the applicant’s father with ICIBL on 30 December 2020 (at [82]-[85]).

41 The Tribunal did not consider the AMC to satisfy the requirements of paragraphs (a) or (c) of the definition. That was so because, with reference to paragraph (a), the AMC was issued with respect to the applicant’s father. In relation to paragraph (c), which concerns a person obtaining a document as a result of a false or misleading statement, the Tribunal placed

weight on the applicant's evidence that his father had been actively involved in requesting the AMC and in all interactions with ICIBL who was associated with the AMC (at [83]).

42 The Tribunal continued:

84. The term 'counterfeit' is not defined in the Act or Regulations. The Macquarie Dictionary provides a definition for 'counterfeit', which the Tribunal considers pertinent and applicable to the provisions of PIC 4020(1), as follows:

adjective **1.** made to imitate, and pass for, something else; not genuine: counterfeit coin.

2. pretended: counterfeit grief.

–*noun* **3.** an imitation designed to pass as an original; a forgery.

4. Archaic a copy.

5. Obsolete a likeness; portrait.

–*verb (t)* **6.** to make a counterfeit of; imitate fraudulently; forge.

7. to resemble.

8. to simulate.

–*verb (i)* **9.** to make counterfeits, as of money.

10. to feign; dissemble.

85. Due to the features of the ICIBL AMC issued to the applicant's father on 30 December 2020 and the circumstances in which it was obtained which are consistent with factors of concern identified in the Department's investigations, the Tribunal has formed the view that there is a reasonable suspicion that the certificate issued with respect to the balance of funds in an ICIBL account held in the name of Khalil Ahmad can be described as a document that is made to imitate and pass for, something else other than a genuine representation of funds held by the applicant's father with ICIBL on 30 December 2020. It therefore reflects the first aspect of the Macquarie Dictionary definition of counterfeit. In forming this view the Tribunal has considered the submissions made and evidence provided by the applicant to refute the contention the ICIBL AMC is not genuine. The Tribunal is not persuaded by this evidence and submissions.

43 On the basis of the above, the Tribunal determined that the applicant did not meet PIC 4020(1) in Schedule 4 of the Regulations. Specifically, the Tribunal considered that there was probative evidence that led to the reasonable suspicion that the ICIBL AMC issued to the applicant's father on 30 December 2020 was counterfeit and was thus a bogus document (as defined by s 5(1) of the Act) (at [86]-[87]).

44 Noting that the requirements in PIC 4020(1) and (2) may be waived in certain circumstances, the Tribunal then considered whether or not the requirements should be waived in this matter.

- 45 The Tribunal noted that the applicant could not think of any “compelling or compassionate circumstances” to warrant the waiver of the conditions but did want the Tribunal to take into account the fact that the applicant was a genuine student. The Tribunal acknowledged that that may well be the case but did not consider that to constitute a compelling circumstance affecting the interests of Australia (at [88]-[91]).
- 46 Noting that the applicant “gave evidence that there [were] not compelling or compassionate circumstances” which warranted consideration of the discretion to waive the provisions, the Tribunal determined that PIC 4020(1) in Schedule 4 of the Regulations should not be waived (at [92]-[93]).
- 47 On the basis of the above, the Tribunal determined that the applicant did not satisfy PIC 4020(1) in Schedule 4 of the Regulations (for the purposes of cl 500.217(1) in Schedule 2 of the Regulations). The Tribunal ultimately affirmed the delegate’s decision refusing to grant the applicant the visa (at [94]-[96]).

Parties’ submissions

Applicant’s written submissions

- 48 The written submissions filed on behalf of the applicant (on 11 April 2023) relevantly provide:
- (l) the Tribunal explicitly found that the AMC did not meet paragraphs (a) or (c) in the definition of bogus document in s 5(1) of the Act. The question, therefore, is whether the Tribunal’s finding that the AMC met paragraph (b) in that definition was based on a correct understanding of the law;
 - (m) the evidence put to the Tribunal was that ICIBL existed as a genuine Pakistani organisation with a type of financial licence and that the bank accounts referred to in its documentation existed (as did the funds indicated in documents like the AMC);
 - (n) there was no evidence before the Tribunal that the AMC was created or issued by someone other than ICIBL. Nor did the Tribunal make any findings as such. On the contrary, the Tribunal found that the AMC contained features common to documents issued by ICIBL;
 - (o) the Tribunal did not reject the evidence from the Minister’s investigation that the funds displayed in documents such as the AMC did, in fact, exist in the relevant account when the document was issued. There was no evidence before it that the

information on the AMC was anything other than an accurate representation of funds in an account;

- (p) the Tribunal found that the AMC was a counterfeit document on the basis of a suspicion that the AMC was ‘a document that is made to imitate and pass for something else other than a genuine representation of funds held by the applicant’s father with ICIBL on 30 December 2020’. This indicates that the Tribunal’s issue with the document was whether the funds displayed on it were genuinely held by the applicant’s father and, as such, genuinely accessible to the applicant;
- (q) essentially, the Tribunal’s finding was that the definition of ‘counterfeit’ could be extended to documents which are suspected to contain information designed to demonstrate an intention which may not be accurate;
- (r) this finding reflects a misunderstanding of what may be considered a bogus document. While a document obtained on the basis of false or misleading information is a bogus document, a document that simply contains inaccurate information is not a bogus document as it does not fall into any of the relevant categories set out in s 5 of the Act (*Singh v Minister for Immigration, Multicultural Affairs and Citizenship* [2013] FCCA 1435 (“*Singh*”) at [27]-[30]). A document which contains technically correct information but which may reflect a false intention also does not fall into any of the relevant categories; and
- (s) the Tribunal’s finding that the AMC was a bogus document was based on a misconception of the definition of bogus document, inconsistent with previous judicial authority.

Applicant’s oral submissions

49 In oral submissions before this Court, Ms Frankel submitted as follows:

- (t) the biggest difference between the applicant’s interpretation of the Tribunal’s findings and that of the Minister is that the document had, in fact, been issued by ICIBL. However, it essentially contained fraudulent information. The Minister, on the other hand, submits that the Tribunal found that the documents had been altered by somebody else (someone who was not part of ICIBL);
- (u) the Tribunal hearing centred around concerns about the organisation and whether it was “a real bank” and if the documents that they issued reflect “genuine funds held by

genuine people” (referencing the Tribunal’s reasons at [83] and the surrounding paragraphs);

- (v) the Tribunal finds a definition of “counterfeit” and then discusses that definition (Tribunal’s reasons at [84]);
- (w) if the Tribunal was concerned that someone had been forging documents then they would have just gone for that definition but the Tribunal applies a “tortured reasoning” which references “a reasonable suspicion that the certificate issued with respect to the balance of funds in the account can be described as a document that is made to imitate and pass for something else other than a genuine representation of funds held by the applicant’s father”;
- (x) essentially, the Tribunal was trying to fit the document into this definition of “bogus document” by saying “it is made to pass as a genuine representation of funds when it is not”;
- (y) in *Singh*, an employer issued a document saying that a person completed work experience and that person used the document to obtain a skills assessment. In that case, it was the person with authority to issue a document who was complicit in the fraud and who intentionally issued a false document (that is, with no one lying to them to get the document and no one altering the document) and that did not fall within the definition of “bogus document”. It is, at best, false or misleading information, which is a different test;
- (z) in *Singh*, the document contained false information but it was not a “bogus document”. That is, the information contained in the document might be false or misleading but the document itself is not a “bogus document”;
- (aa) the applicant’s interpretation of the Tribunal’s findings is that the document was produced by the organisation that claimed to have produced it and that it was essentially produced through their normal channels;
- (bb) the way in which the Tribunal characterised the “gist of the information” put to the applicant (found at [25] in its reasons) contains four points which relate to the operations of ICIBL as an organisation. The Tribunal states that it is a “ghost bank” (that is, it does not actually exist as a physical bank), makes claims about their offices and whether they exist where they say they do and (most importantly) points out that “it has been established that whilst bank accounts referred to in the ICIBL documentation do exist virtually, the funds do not belong to the student visa applicants

- or their financial sponsors. The funds have been loaned by a third party recommended by the bank's head office verification officer for a fee";
- (cc) the funds belong to someone else and there is an arrangement whereby someone pretends to loan money to students for a fee. This is arranged by ICIBL and the relevant documents have then been produced, reflecting funds in an account which actually does exist and the documents have been used to attempt to get a student visa;
 - (dd) this does not demonstrate that someone is altering the documents, that there is "some sort of suspiciousness about how the documents are being produced or that they are being produced through some other channel than the way this organisation ordinarily produces documents". Further, "it does not talk about documents being altered or produced by a third party";
 - (ee) the applicant's representative provided information to the Tribunal to support the argument that this was a genuine bank providing genuine bank statements. There is only one paragraph where the applicant's representative talks about other people altering documents (which appears to be made in defence of the organisation as a bank);
 - (ff) at [49] of its reasons, the Tribunal again restates the gist of the information covered by the s 375A certificate and states that the AMCs produced by ICIBL do not reflect funds held in an ICIBL account by student visa applicants or their sponsors. However, the Tribunal never makes a finding that the documents were not produced by ICIBL;
 - (gg) at [69] in its reasons, the Tribunal makes a finding that "ICIBL operates as a genuine [non-banking finance company]" which offers "certain investment and finance products, but this does not equate to them offering a full range of account types". Essentially, the Tribunal found it was a real organisation that exists and can do certain things;
 - (hh) at [79] of its reasons, the Tribunal explains what had been found in the investigation (and which the Tribunal relied upon) was that people were contacting a third party and there was a third party who was being referred to by an ICIBL officer who helped to make arrangements for funds to appear in an account for which ICIBL could then issue a bank statement to show that funds were available in the account. The issue is that those funds may not be genuinely accessible to the student visa applicant or be genuinely held by the account holder;

- (ii) if the Tribunal had properly considered it, it may well have found that it fell within the definition of “false and misleading information in a material particular”. It simply does not fall into any of the bogus document categories – which was really the issue in *Singh*;
- (jj) the Tribunal’s finding is on the basis of paragraph (b) – which is to do with counterfeit documents. In order to make the document fit the definition of “counterfeit”, the Tribunal does not talk about imitation designed to pass as an original or a forgery. It says it is a document which “is made to imitate and pass for something other than a genuine representation of funds held by the applicant’s father”;
- (kk) the investigation found that the funds existed in an actual bank account, however, because of the finding that those funds were not genuinely available, the Tribunal made the finding that this document is a document which is made to imitate or pass for something. In the applicant’s submission, that goes against the definition of “bogus document” because the definition only extends to documents which have been issued by someone who did not have the requisite authority or have been forged entirely out of nothing by someone who did not have the authority to do so. It doesn’t extend to documents which have been issued by an organisation that really exists, that really has a process for issuing documents;
- (ll) if the Tribunal had correctly understood the definition of “bogus document” and understood that it could not be applied to a document issued (by the organisation that said it was issuing it) to the person that it should be issued to, then it would have had to grapple with other parts of the “false and misleading information test” in PIC 4020;
- (mm) a “bogus document” as defined by the Act is not simply a document where there is some sort of fraud or deception in relation to the document. There is a very strict definition with very strict categories and if the document does not fall into one of those categories, it cannot be a bogus document (even if there is some sort of fraud or deception);
- (nn) the issue for the applicant is whether the document in question fits into one of the categories of the definition. It does not;
- (oo) the Tribunal failed to understand its task or the definition of “bogus document”. Had the Tribunal properly understood the definition, it would have instead been looking at the question of false or misleading information in a material particular; and

- (pp) had the Tribunal done so, it would have needed to consider whether it was false or misleading in a material particular 12 months after the document had been issued. On that basis, it is not futile to say that the matter should go back to the Tribunal based on the fact that the Tribunal misunderstood the definition of “bogus document” when making its decision.

Minster’s written submissions

50 The written submissions filed on behalf of the Minister (on 21 April 2023) relevantly provide:

- (qq) the applicant’s ground rests upon the essential, but errant, contention that properly understood, the Tribunal’s concern or issue with the AMC was whether the funds it identified as being held by the applicant’s father were genuinely held by him and therefore accessible to the applicant (see the applicant’s submissions at [23]);
- (rr) that is not a correct understanding of the Tribunal’s finding;
- (ss) the Tribunal’s finding was that there were grounds to reasonably suspect that the AMC was not a document issued by ICIBL showing funds genuinely held by the Applicant’s father. The information assessed included:
- (i) the investigation undertaken by the Department as to the issuing of ICIBL documents where funds were not actually held or available to an applicant for a student visa, the full nature and content of which could not be set out in the Tribunal’s reasons as a result of the s 375A certificate (see the Tribunal’s reasons at [79]);
 - (ii) the fact that the Department had ascertained that AMCs produced by ICIBL do not actually reflect funds held in an ICIBL account by student visa applicants or their financial sponsors (see the Tribunal’s reasons at [49]);
 - (iii) information identified by the applicant’s representative was consistent with information identified by the investigation (see the Tribunal’s reasons at [79]);
 - (iv) discrepancies between the details (the telephone number, business addresses) of ICIBL on the AMC and the ICIBL website, site checks and investigation findings (see the Tribunal’s reasons at [51]-[66]; and

- (v) the commonality of features on the AMC with other such certificates issued by ICIBL that had been found not to be genuine and the circumstances in which it was obtained which were consistent with factors of concern identified in the Department's investigations (see the Tribunal's reasons at [73]-[74], [85]).
- (tt) as such, the AMC itself was reasonably suspected to have been altered or not otherwise to be a genuine certificate (as distinct from an otherwise genuine document obtained as a result of false or misleading information);
- (uu) at [79] of its reasons the Tribunal identified information provided by the applicant's representative concerning educational consultants having been involved in fraudulent activities, including editing documents issued by ICIBL and then presenting those documents to relevant governments or agencies. It was reasoned that that information appeared consistent with the investigation, which found that AMCs were provided where relevant funds did not exist or did not belong to a student or their sponsor, and where the student visa arrangements had been made by a third party who an applicant had been referred to by the head verification officer at ICIBL;
- (vv) similarly, at [73] of its reasons the Tribunal identified that the applicant had made submissions concerning the commonality of the AMC with other such certificates that had been determined not to be genuine and suspected to be associated with organised migration fraud;
- (ww) the Tribunal also noted that, whether ICIBL operates a branch or head office at the claimed address in Lahore does not in and of itself create or mitigate reasonable suspicion that the AMC in this matter was bogus (see the Tribunal's reasons at [58]);
- (xx) it also accepted that it may be the case the contact number for the head office of ICIBL, if called, diverts to a mobile number. But for reasons which could not be discussed in its decision due to the action of s 375A(2)(b), it was not reassured by this claim. This is because it was not dissimilar to procedures identified in the Department's investigation into non-genuine AMC documentation whereby connection was made with a person or persons producing ICIBL AMCs which did not reflect actual funds held by the identified account holder in the AMC (see the Tribunal's reasons at [66]);

- (yy) at [75]-[76] of its reasons the Tribunal acknowledged subsequent evidence as to the financial and business interests of the applicant's father as well as his willingness to support the applicant in his studies. The Tribunal observed, however, that the father's ability to provide such support was not the relevant issue and did not resolve the issue of whether the applicant had provided (or had caused to be provided) a bogus document;
- (zz) it is apparent from those paragraphs that the Tribunal's concern was as to the genuineness of documents said to have been issued by ICIBL as reflecting funds held in a relevant account. Where the applicant directly made submissions about that matter, it is apparent the applicant understood what the Tribunal's concern was;
- (aaa) a concern of that kind is clearly within the terms of paragraph (b) of the relevant definition. As the Tribunal found, it is also distinct from the requirement of paragraph (c) of that definition. The distinction arising is that paragraph (b) is concerned with a document that is said to be genuine but is not because the document is not actually what it says that it is. Paragraph (c), however, is directed to a document that was obtained as a result of misleading or false information but which, of itself, is what it is said to be;
- (bbb) as the Tribunal's reasons identify, the information available in the investigation was not able to be exhaustively revealed or set out in its reasons. Notwithstanding that need for circumspection about certain matters, the Tribunal's reasons reflect a thorough consideration of the available evidence and demonstrate that the Tribunal correctly understood its task in considering whether the AMC was a bogus document. In all of those circumstances, a conclusion that the Tribunal erred in the way contended is not established here;
- (ccc) for the reasons set out above, the applicant's contention that the Tribunal relied upon a definition of 'counterfeit' as extending to documents which are suspected of containing simply inaccurate information (the applicant's written submissions at [24]-[25]) is not correct as a matter of fact;
- (ddd) *Singh* is not of assistance or relevance to the applicant here (cf the applicant's written submissions at [25]). *Singh* is fact specific. It concerned a matter where a bogus document (a skills assessment) had been obtained as a result of false and misleading documents provided to the skills assessor (*Singh* at [27]). However, the decision-maker identified the bogus document as those which had been provided to the skills

assessor and not the skills assessment itself (which the Court accepted was the document that should have been found as a bogus document: *Singh* at [27]). To the extent an error of that kind could be said to be material, that decision is not relevant to the Tribunal's decision made here; and

- (eee) *Singh* does not stand for the proposition that a document that simply contains inaccurate information is not a bogus document. However, as a matter of principle it is accepted that a document which contains information which is merely inaccurate will not amount to a bogus document. There must be an element of fraud or deception by some person. The Tribunal recognised and understood that requirement (see the Tribunal's reasons at [36]). For the reasons the Tribunal explained, it was satisfied that requirement was met.

Minister's oral submissions

51 In oral submissions before this Court, Ms Taggart submitted as follows:

- (fff) the Minister understands the key concern to be: did the Tribunal err in concluding that there was a bogus document provided to it on the basis that the definition of that term was met in relation to paragraph (b) of the relevant definition?;
- (ggg) the Minister understands the applicant's core contention to be that the Tribunal firstly found that the relevant document in issue was in fact issued by the ICIBL but that it contained (or possibly contained) incorrect information;
- (hhh) it is here that the applicant errs in relation to the factual understanding of what the Tribunal actually found;
- (iii) in order to meet the definition of a "bogus document" (regardless of which paragraph of the definition applies), the Full Court of the Federal Court (the "Full Court") has held (in *Trivedi v Minister for Immigration and Border Protection* [2014] FCAFC 42 ("*Trivedi*") at [33]) that there "must be an element of fraud or deceit" (as set out at [34] in the Minister's written submissions and referencing [36] in the Tribunal's reasons);
- (jjj) the Tribunal must have grounds for holding a reasonable suspicion. There is no requirement that there be a finding of fact that there was misleading and deceptive conduct or any of the elements that are required. There simply needs to be a reasonable suspicion;

- (kkk) the Minister’s ultimate contention is that the Tribunal found the certificate in issue was a “bogus document” on the basis that it had a reasonable suspicion that it met paragraph (b) in the relevant definition. The Tribunal did not determine that the document was or was not issued by the bank but instead found that there was a reasonable suspicion that the document, which purported to be a certificate giving evidence of funds to have been held by the applicant’s father, was not that document;
- (lll) in coming to those findings, one of the issues the Tribunal confronted was in relation to a certificate issued by the Minister pursuant to s 375A of the Act which related to an investigation undertaken in relation to documents (of the sort the Tribunal was considering in this matter) issued by ICIBL (the relevant institution in this matter);
- (mmm) the s 375A certificate meant that the Tribunal could not provide certain information to the applicant. Instead, it explained to him the “gist of that information”. Further, as noted at [79] in the Tribunal’s reasons, the Tribunal needed to balance the need to identify the factual basis and findings it had made with its obligation not to reveal certain information;
- (nnn) the Minister relied on *Minister for Immigration & Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 in that regard, noting the requirement for additional care and caution to ensure that particular words or summaries provided by the Tribunal were not put at a height that was not fair in all of the circumstances;
- (ooo) the Tribunal here had regard to the delegate’s decision and noted the delegate’s finding that the relevant document was bogus and the Tribunal made inquiries of the Department as to the factual basis for that finding. Material was provided to the Tribunal together with a s 375A certificate and the Tribunal gave the applicant an opportunity to consider and comment on the certificate. The applicant did not do so;
- (ppp) the Tribunal also gave the applicant an opportunity to comment on the “gist of the information” provided by the Department in relation to the investigation and the applicant did so. The Tribunal weighed all of the material before it and came to a conclusion (as set out in the Minister’s written submissions at [22]);
- (qqq) the Tribunal (at [79] in its reasons) considered particular submissions that the applicant’s representative had made and it is evident that the representative was aware (or had been told) that there were some educational consultants in Pakistan involved in fraudulent activities, including editing documents issued by the relevant institution and presenting those in visa applications. Further, the Tribunal identified that the

information from the applicant's representative was consistent with the information that the Department had found – that is, that the institution operated as a “ghost bank” in the context of providing the relevant documents in issue to students from Pakistan applying for student visas where the funds do not exist or do not belong to the student or sponsor. Those arrangements were made by a third party and the relationship between the third party and the applicant in question had been facilitated by someone at the bank;

- (rrr) this demonstrates, contextually, that there is some concern as to fraudulent activity and the production of these documents. It is not the case that it is merely an arm's length transaction where the bank is effectively being misled and has no relevant knowledge to produce what otherwise would be a genuine document;
- (sss) in relation to [73] of the Tribunal's reasons, there is again reference to submissions made by the applicant's representative which addressed that there had been commonality between certificates issued in student visa applications for other matters and the document the applicant relied upon in this matter and that the certificates in the other matters had been found not to be genuine. Further, the Tribunal goes on to make an express finding that it was satisfied that there was a significant degree of commonality between the documents considered in the investigation and the document it was dealing with here (at [74] in its reasons);
- (ttt) at [85] in its reasons, the Tribunal effectively sets out its reasonable suspicion that the certificate in issue was not what it purported to be (being a document issued by the bank to represent funds held by the applicant's father). What is not in the reasons is a finding that the document had been properly or duly issued by the bank. In the Minister's submission, the distinction in the definition of “bogus documents” is that paragraph (b) is concerned with the document itself in effect “not being what it says it is”, whereas paragraph (c) of the definition is concerned with a document that would otherwise be what it purports to be but was based on misleading information. An example of this is seen in *Singh* (relied upon by the applicant);
- (uuu) the facts and findings in *Singh* are different to that which is submitted by the applicant here. As the Minister understands the decision, a skills assessment was provided in support of a visa application. That skills assessment had been issued based on information or documents given to the skills assessor showing that the applicant in that matter had relevant qualifications. However, the documents in support of the

assessment were themselves incorrect. In *Singh*, the Tribunal needed to determine which document was bogus – the skills assessment obtained on the basis of misleading information or, as it found, the documents given to the assessor to get the skills assessment;

- (vvv) in *Singh*, it was a technical issue as to what the Tribunal identified as being the relevant bogus document;
- (www) to demonstrate the distinction between the definition of “bogus document” in paragraphs (b) and (c), in the context of *Singh*, the skills assessor had given a genuine skills assessment (that is, there was no concern that a skills assessment had not been provided). The document, which was otherwise genuine, had been obtained because the person producing the skills assessment had effectively been misled. The definition in (b) is concerned with the document itself (not whether there is a document which is otherwise good but has somehow been acquired as a result of misleading information) that contains the necessary element of deceit or fraud (which the Full Court has held is required);
- (xxx) in relation to [83] of the Tribunal’s reasons, the Tribunal considers whether the document in question here could have met the definitions in paragraphs (a) or (c) of “bogus document” and rejects the proposition that paragraph (a) was applicable, reasoning that the document purported to be issued in the name of the applicant’s father and was. Similarly, the Tribunal rejected paragraph (c) because it wasn’t satisfied that the document had been produced on the basis that the banking institution had been misled;
- (yyy) it is evident from the Tribunal’s reasons that it understood what “bogus document” meant and what its task was. The tests are set out correctly in its reasons and the relevant authorities are identified;
- (zzz) paragraph [83] reflects a nuanced and correct understanding of what the definition requires. To suggest that the Tribunal “falls at the post”, on the basis of [85] in its reasons, or that it completely and fundamentally misunderstood and misapplied what is required, simply cannot be made out;
- (aaaa) to the extent that the applicant submits that there were findings made about the bank issuing documents, the focus of the test (as the Tribunal correctly apprehended) is not as to the bank or the actor who has undertaken the relevant fraud or deceit which is necessary for the purpose of the definition. The focus is on the document itself and it

is not necessary for the Tribunal to be satisfied (except in exceptional circumstances which do not arise here) of what the applicant did or did not know about the relevant fraud, deceit or the bogus document. The focus must always be on the document itself;

(bbbb) insofar as the applicant relies on [25] in the Tribunal's reasons to make a submission that the investigation or the nature of the investigation undertaken revealed that someone interceded to make the bank an innocent victim, the investigation did not go that far. Paragraph [25] simply sets out the gist of what the investigation revealed which, among other things, was that the bank was a "ghost bank" which did not actually exist as a physical bank or operate as a genuine bank. It identified that there was no evidence of physical bank offices at the claimed address that had been on the relevant documents and the phone numbers claimed to be for the bank were not registered to it;

(cccc) in the third and fourth dot points of [25], the Tribunal identified the similarities between the document relied on by the applicant and the documents considered in the investigation. There was no basis upon which to submit that the investigation found that the bank was in effect an innocent victim – or that the bank was the perpetrator of the fraud or deceit. It did not need to identify where the fraud or deceit was coming from – simply that there was a reasonable suspicion that the document was bogus;

(dddd) at [49] in the Tribunal's reasons, the Tribunal again sets out a summary of the "gist of the information" about the investigation and again notes that it revealed that the bank was a "ghost bank", did not actually exist as a physical bank and so on. The Tribunal did not reach a conclusion that the bank was an innocent victim. Instead, it looked at the submissions made by the applicant's representative and looked at the evidence that there was a physical location of the bank at places it had identified and was prepared to say that it recognised that the office existed. Further information was provided that the phone numbers (that were not previously registered) had been registered to the bank and the Tribunal completed a weighing exercise to determine whether, on the basis of the information before it, it was satisfied that there was a reasonable suspicion that the ICIBL AMC provided by the applicant was a "bogus document"; and

(eeee) at [72] of its reasons, the Tribunal rejected submissions that the applicant's father could demonstrate the availability of funds (as required for the grant of the visa),

noting that the issue it was concerned with was the genuineness of the document itself. This paragraph reveals quite clearly that the Tribunal understood and was keenly focused on its task. That is, were there grounds to reasonably suspect that the certificate was bogus;

Did the Tribunal err in finding that the document was a “bogus document”?

52 As outlined above, the core issue for the Court to consider is whether, having held a reasonable suspicion that the applicant “had provided or had caused to be provided” a bogus document, the Tribunal erred in finding that those reasons were sufficient to meet paragraph (b) in the definition of “bogus document” as set out in s 5(1) of the Act (ie, that the document “is counterfeit or has been altered by a person who does not have authority to do so”).

53 The Full Court in *Singh v Minister for Immigration and Border Protection* [2018] FCAFC 52 (“*Singh FCAFC*”) analysed decisions (both of the Full Court and at first instance) which looked at the proper construction of PIC 4020 in Schedule 4 of the Regulations. As noted by the Full Court in *Singh FCAFC*, in matters of this sort, “different principles can apply in cases where a visa applicant contends that his or her visa application was invalid because of fraud, as opposed to a contention that there has been a misconstruction or misapplication of PIC 4020 (as is the case in the matter currently before the Court). Further, in judicial review applications, it is important to pay close attention to how the applicant present his or her case: *Singh FCAFC* at [144].

54 As set out above, in the present matter the applicant contends that the Tribunal misconstrued the requirements of PIC 4020 in Schedule 4 of the Regulations. Specifically, the applicant claims that the Tribunal erred in finding that the ICIBL AMC was a “bogus document” because it does not meet the description in paragraph (b) of the definition of bogus document set out in s 5(1) of the Act (that is, that the document is counterfeit or has been altered by a person who does not have authority to do so).

55 PIC 4020 in Schedule 4 of the Regulations relevantly provides:

4020

- (1) There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal during the review of a Part 5-reviewable decision, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:

- (a) the application for the visa; or
- (b) a visa that the applicant held in the period of 12 months before the application was made.

56 It does not appear to be in dispute here that the applicant on this matter gave the Department the document in question – being the ICIBL AMC – or caused that document to be given to the Department.

57 The Tribunal outlined the chain of events in this regard as follows:

- 15. In relation to the circumstances by which the ICIBL AMC was provided to the Department, the applicant gave evidence at hearing that he asked his father, Khalil Ahmad, to get proof that there were sufficient funds to support his proposed studies in Australia. His father then contacted ICIBL to get the statement showing there were sufficient funds. Once his father had the ICIBL AMC the applicant's brother sent it through to him as an attachment to a WhatsApp message. The applicant then passed it on to his current representative, who assisted him to prepare the Student visa application.

58 As explained above, bogus document is defined in s 5 of the Act as follows:

5 Interpretation

- (1) In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is *counterfeit* or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

59 There are two elements which need to be considered when determining if a document is a bogus document (as defined in s 5(1) of the Act). The Minister (or the Tribunal) must have a reasonable suspicion in relation to a document *and* that suspicion must relate to one of the three circumstances set out in the definition of bogus document above.

60 In considering the document before it in this matter, the Tribunal discussed the s 375A certificate issued by the Department and confirmed that the relevant information was put to the applicant pursuant to s 359A of the Act.

61 Relevantly, the Tribunal stated that:

25. The particulars of information outlined in the s 359A letter sent to the applicant, through his representative on 16 December 2021, were as follows:

- ICIBL has been identified as a ‘ghost’ bank which does not actually exist as a physical bank or operate as a genuine bank.
- Investigations revealed there was no evidence of physical bank offices at the claimed address for the ICIBL head office in Lahore or the branches of the bank in Islamabad, and that phone numbers claimed to be for the bank were either linked to other businesses or not operational.
- It has been established that whilst bank accounts referred to in ICIBL documentation do exist virtually, the funds do not belong to the Student visa applicants or their financial sponsors. Funds have been loaned by a third party recommended by the bank’s head office verification officer for a fee.
- The AMC provided in association with the applicant’s Student visa application contains features that were identified in the investigation as common in documentation issued by ICIBL. In particular, the bank statement he provided lists a single large credit to the account, and no other transactions.

62 The Tribunal then explained that it was unnecessary for the applicant to be aware of the false information provided, noting that:

36. While PIC 4020 refers to information that is false, in the sense of purposely untrue, it is not necessary for the Minister (or the Tribunal on review) to conclude that the applicant was aware the information was purposely untrue in order for PIC 4020 to be engaged. However, an element of fraud or deception by some person is necessary to attract the operation of the provision: *Trivedi v MIBP* [2014] FCAFC 42.

63 The Tribunal summarised the information put to the applicant (as outlined above) pursuant to s 359A of the Act, as follows:

49. The gist of the information put to the applicant pursuant to s 359A is that the Department has ascertained that ICIBL is an entity, described as a ‘ghost bank’, which does not actually exist as a physical bank or operate as a genuine bank and that account maintenance certificates produced by ICIBL do not actually reflect funds held in an ICIBL account by Student visa applicants or their financial sponsors.

64 The Tribunal also made findings about the contact numbers for, and operation of, ICIBL, as follows:

66. As to the submission that the contact number for the head office of ICIBL, if called diverts to a mobile number, the Tribunal accepts this may be the case but for reasons which cannot be discussed in this decision due to the action of s 375A(2)(b), is not reassured by this claim. This is because there being a mechanism by which enquiries to a particular ICIBL phone number, result in a diversion to a mobile phone number used by a third party is not dissimilar to procedures identified in the Department's investigation into non-genuine AMC documentation whereby connection was made with a person or persons producing ICIBL account maintenance certificates which did not reflect actual funds held by the identified account holder in the AMC.

...

69. On the basis of the available information the Tribunal is satisfied that there is sufficient evidence to find that ICIBL operates as a genuine NBFC in Pakistan, offering certain investment and finance products, but that this does not equate to ICIBL offering the full range of account types and financial services associated with banks registered under applicable banking regulations in Pakistan.

65 The Tribunal then discussed the commonalities between the relevant AMC document provided by the applicant in this matter and those identified in the investigation, as follows:

72. In his statutory declaration of 11 February 2022 the applicant declares if the Department accepts that only a single transaction was made by his father in relation to the account referred to in the ICIBL AMC the Department should accept the AMC to be a 'true and legal document'. The Tribunal does not accept this contention and can see no logical reason why a transaction shown on a document, such as an AMC, which is suspected to be not genuine should be accepted as a genuine 'true and legal' document merely because of the information displayed on that document.
73. The written submissions from the applicant's representative contends that the commonality between the ICIBL AMC associated with the applicant's Student visa application and other ICIBL account maintenance certificates which have been determined to be not genuine can be explained. He submits that because ICIBL was not a consumer bank offering products, such as savings accounts, funds deposited for placement in a term deposit for investment purposes would be established by a single transaction. The representative contends that all ICIBL term deposits, by inference genuine or otherwise, would have this feature in common and therefore this feature should not be ascribed any weight as a possible indicator the ICIBL AMC issued to the applicant's father is not genuine.
74. The Tribunal acknowledges that there is reasonable logic in the representative's submission with regard to this factor. Notwithstanding this, the Tribunal is satisfied that there is a significant degree of commonality between the ICIBL AMC associated with the applicant's Student visa application and other ICIBL account maintenance certificates that have been assessed as not genuine and suspected to be associated with organised migration fraud.

66 The Tribunal also considered whether evidence of other assets held by the applicant's father was relevant to the issues for consideration in this matter, writing as follows:

75. The Tribunal acknowledges that the applicant has provided evidence of funds held in Faysal Bank by his father and as well evidence about his father's business interests in Pakistan and of his father's willingness to financially support the applicant whilst he is studying in Australia. However, the ability of the applicant's father to provide financial support is not the issue on review and funds held in an account with a different financial institution, in this case, the Faysal Bank, cannot displace or replace the ICIBL AMC document that was provided relating to the visa application. The determinative issue in this case is not the financial position of the applicant's father, it is whether there is evidence that the applicant has given, or caused to be given, in relation to the Student visa application, a bogus document or information that is false or misleading in a material particular.
76. For similar reasons the Tribunal has formed the view that the applicant's submission that once the Department had concerns about the ICIBL AMC submitted in association with his Student visa application, he should have been afforded the opportunity to get his father to shift funds to a more reputable or otherwise appropriate bank in Pakistan, thereby allowing him to provide proof that adequate funds were held in a bank that would not cause concern to the Department. The Tribunal does not accept this line of reasoning, as whilst it may be relevant to a circumstance where the determinative issue was whether the applicant had access to sufficient financial capacity to provide for his expenses during the period of his intended study, as referred to above the issues in the current matter pertain to the possible provision of bogus documents.
77. The question for the Tribunal is whether the ICIBL AMC document itself is a bogus document. If a document which is found to be bogus, as defined by s 5 of the Act, has been submitted in connection with the Student visa application, no more is needed to show that there is 'evidence' of the sort referred to in PIC 4020(1).

67 The Tribunal then considered the document itself, noting as follows:

79. The applicant's representative has submitted that whilst he was recently in Pakistan he was informed that previously some of the educational consultants in Pakistan have been involved in fraudulent activities including editing documents issued by ICIBL on computer programs and presented to UK or other consulates. This appears to be information consistent with the Department's finding that ICIBL operates as a 'ghost' bank in the context of account maintenance certificates being provided to students from Pakistan applying for Australian student visas, where the funds do not exist or do not belong to the student or sponsor, and arrangements were made by a third party, where the applicants were referred to or put in touch with the third party who made the arrangements by the head office verification officer at ICIBL. The Tribunal accepts that there is a reasonable suspicion of this fraudulent activity occurring, as this is the result of what the Tribunal is satisfied was a comprehensive investigation by the Department, aspects of which the Tribunal has not been at liberty to discuss in these reasons.

...

85. Due to the features of the ICIBL AMC issued to the applicant's father on 30 December 2020 and the circumstances in which it was obtained which are consistent with factors of concern identified in the Department's investigations, the Tribunal has formed the view that there is a reasonable suspicion that the certificate issued with respect to the balance of funds in an ICIBL account held in the name of Khalil Ahmad can be described as a document that is made to imitate and pass for, something else other than a genuine representation of funds held by the applicant's father with ICIBL on 30 December 2020. It therefore reflects the first aspect of the Macquarie Dictionary definition of counterfeit. In forming this view the Tribunal has considered the submissions made and evidence provided by the applicant to refute the contention the ICIBL AMC is not genuine. The Tribunal is not persuaded by this evidence and submissions.

68 As correctly summarised by the Minister (at [22]-[23] in written submissions filed in this Court on 21 April 2023), what can be gleaned from the information set out in the extracted paragraphs from the Tribunal's decision above is that the Tribunal considered there to be grounds to reasonably suspect that the AMC was not a document issued by ICIBL showing funds genuinely held by the applicant's father.

69 Those grounds included:

- (ffff) the investigation undertaken by the Department in relation to the issuing of ICIBL documents where funds were not actually held or available to an applicant for a student visa, the full nature and content of which was not and could not be set out in the Tribunal's decision by reason of the s 375A certificate issued by the Department (at [79]);
- (gggg) the fact that the Department had learned that AMCs produced by ICIBL do not reflect actual funds held in ICIBL accounts by student visa applicants or their financial sponsors (at [49]);
- (hhhh) information identified by the applicant's representative was consistent with the information identified by the Department's investigation (at [79]);
- (iiii) discrepancies between the details (telephone number and business addresses) of ICIBL on the AMC and the ICIBL website, site checks and in the Department's investigation findings (at [51]-[66]); and
- (jjjj) the commonality of features on the AMC with other such certificates issued by ICIBL that had been found not to be genuine and the circumstances in which it was obtained were consistent with factors of concern identified in the Department's investigation (at [73]-[74] & [85]).

70 It was on the basis of this information that the Tribunal “reasonably suspected” that the AMC was a “bogus document” or a document that was otherwise “not genuine” (as distinct from an otherwise genuine document that was obtained as a result of false or misleading information).

71 It is noted that the applicant (at [24]-[26] in written submissions filed in this Court on 11 April 2023) submitted that “the Tribunal’s finding was that the definition of ‘counterfeit’ could be extended to documents which are suspected to contain information designed to demonstrate an intention which may not be accurate”. Further, the applicant submitted that a document that simply contains inaccurate information is *not* bogus document as it does not fall into any of the relevant categories set out in s 5 of the Act.

72 The applicant relies on the following passages from in *Singh* in this regard:

27. That statement, relying as it did on information gathered by the Minister’s department, provided the Tribunal with a reasonable basis for suspecting that the information contained in the documents supplied to the TRA, and which led to the applicant obtaining his skills assessment, contained false or misleading statements. In those circumstances, the Tribunal should have found that the TRA assessment was a bogus document within the meaning of s.97 of the Act on the basis that the documents which the applicant had submitted to the TRA met the test set out in s.97(c). However, it did not do that. Instead, it held that the falsity of the documents submitted to TRA meant that it was they that were bogus documents, a finding which does not reflect any of the tests in s.97.

28. The relevant reasoning appears in the second and third sentences of para.66 of the Tribunal’s reasons where it said:

The Tribunal reasonably suspects that the applicant’s positive skills assessment from TRA was obtained because of a false or misleading statement to TRA that the applicant had completed over 900 hours of directly related work experience. Consequently the Tribunal finds that the applicant’s work reference letter and documents were ‘bogus documents’ within the meaning of s.97(c) of the Act.

29. Those statements disclose a critical misunderstanding of how s.97 operates because they characterised the documents submitted to TRA as bogus documents on the basis that they were false and misleading, not on the basis that they had been “obtained because of a false or misleading statement”. That misunderstanding continued in para.67 of the Tribunal’s reasons where the Tribunal held that there was evidence before it that the applicant had given a bogus document to a relevant assessing authority and that therefore the applicant did not meet the requirements of PIC 4020(1)(a).

30. The Tribunal’s finding that the documents which the applicant had submitted to TRA were bogus was erroneous because it arose out of a misapplication of s.97 of the Act. Because that finding was erroneous, there was no basis for the Tribunal’s consequent finding that the applicant did not meet the requirements of PIC 4020(1)(a) for the reasons it stated.

73 The circumstances in *Singh* are quite different from the circumstances seen in this matter. In *Singh*, documents containing false and misleading statements were provided to the skills assessor (“TRA”) in order for the applicant in that matter to obtain a skills assessment. As correctly identified by Ms Taggart for the Minister (in oral submissions before the Court), the decision-maker in *Singh* identified the documents provided to TRA as the bogus documents. The Court found that the skills assessment provided by TRA (based on the false and misleading documents) should have been found to be the bogus document: *Singh* at [27].

74 *Singh* does not stand for the proposition that a document that simply contains inaccurate information is not a bogus document. That said, however, a document that contains information which is merely inaccurate will not amount to a bogus document. There needs to be an element of fraud or deception by a person: *Trivedi* at [33].

75 In this matter, the Tribunal found that the AMC did not meet the definition of bogus document as outlined in paragraphs (a) or (c) or the relevant definition (set out in s 5(1) of the Act). Relevantly, the Tribunal explained:

83. In making this finding the Tribunal has taken the view that the certificate was issued with respect to Khalil Ahmad, the father of the applicant. The Tribunal has not taken the view that the certificate was obtained because of a false or misleading statement, whether or not made knowingly. In making this latter finding the Tribunal has placed weight on the evidence given by the applicant as to his father’s active involvement in requesting the ICIBL AMC and in all interactions with the person from ICIBL associated with the AMC. The Tribunal has also in part placed weight on aspects of the Department’s investigations into ICIBL which s 375A(2)(b) of the Act restricts discussion of in this decision. As a consequence the definition of a bogus document, as defined by s 5(1)(a) and s 5(1)(c) is not met.

76 The Tribunal then considered whether the document would be captured by paragraph (b) in the definition of bogus document (as set out in s 5(1) of the Act) – that is, whether the AMC was “counterfeit or ha[d] been altered by a person who does not have authority to do so”.

77 The Tribunal considered the meaning of the word “counterfeit”, as follows:

84. The term ‘counterfeit’ is not defined in the Act or Regulations. The Macquarie Dictionary provides a definition for ‘counterfeit’, which the Tribunal considers pertinent and applicable to the provisions of PIC 4020(1), as follows:

adjective **1.** made to imitate, and pass for, something else; not genuine: counterfeit coin.

2. pretended: counterfeit grief.

–*noun* **3.** an imitation designed to pass as an original; a forgery.

4. Archaic a copy.

5. Obsolete a likeness; portrait.

–*verb (t)* **6.** to make a counterfeit of; imitate fraudulently; forge.

7. to resemble.

8. to simulate.

–*verb (i)* **9.** to make counterfeits, as of money.

10. to feign; dissemble.

78 In circumstances where no definition of the word “counterfeit” is included in the Act or the Regulations, the Tribunal was correct to apply the ordinary meaning of the word. The Tribunal did so here, consulting the Macquarie Dictionary in that regard.

79 Having regard to the definitions outlined above, the Tribunal ultimately determined as follows (emphasis added):

85. Due to the features of the ICIBL AMC issued to the applicant’s father on 30 December 2020 and the circumstances in which it was obtained which are consistent with factors of concern identified in the Department’s investigations, **the Tribunal has formed the view that there is a reasonable suspicion that the certificate issued with respect to the balance of funds in an ICIBL account held in the name of Khalil Ahmad can be described as a document that is made to imitate and pass for, something else other than a genuine representation of funds held by the applicant’s father with ICIBL on 30 December 2020.** It therefore reflects the first aspect of the Macquarie Dictionary definition of counterfeit. In forming this view the Tribunal has considered the submissions made and evidence provided by the applicant to refute the contention the ICIBL AMC is not genuine. The Tribunal is not persuaded by this evidence and submissions.

80 As correctly characterised by the Minister (at [30] in written submissions filed in this Court on 21 April 2023), paragraph (b) in the definition of bogus document in s 5(1) of the Act is concerned with a document that is said to be genuine but is not genuine because the document is not actually what it claims to be. This is essentially what the Tribunal determined here – that is, that the ICIBL AMC was a document that was issued for the purpose of representing the funds held by the applicant’s father with ICIBL as at 30 December 2020.

81 As explained by the Court above (at [68]-[69]), the Tribunal determined that there were grounds to reasonably suspect that the AMC was not a document issued by ICIBL showing funds genuinely held by the applicant’s father. That is, the Tribunal had a *reasonable suspicion* in relation to the ICIBL AMC document. The Tribunal considered the definition of bogus document and whether the ICIBL AMC fell within any of the circumstances set out in the definition of bogus document (as set out in s 5(1) of the Act) and found that the document was a “counterfeit”. As such, it fell within paragraph (b) of that definition. It was on that basis that the Tribunal ultimately determined that the AMC was a bogus document.

82 No error arises in this regard. The Tribunal understood and correctly undertook its task when determining whether the applicant had given, or caused to be given, to the Department, a bogus document.

CONCLUSION

83 The amended application for judicial review filed on behalf of the applicant on 5 April 2023 has failed to identify any jurisdictional error on the part of the Tribunal.

84 The application is, accordingly, dismissed.

I certify that the preceding eighty-four (84) numbered paragraphs are a true copy of the Reasons for Judgment of Judge Kendall.

Associate:

Dated: 14 September 2023

